

Laws relating to the protection of the rights of inter-state migrant workers in India: A critical analysis

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Abstract

Inter State migrant workers are one of the much-marginalized sections of worker class. They not only have to leave their own state and place of residence, but also have to face several troubles in the way of searching for a livelihood and a decent living condition. Though there is a central legislation that ensures various kinds of rights to the interstate migrant workers, yet the effectiveness of the law is always in question. Under the backdrop of these scenarios, this paper tries to analyse the various aspects of interstate migrant labourers, the effectiveness of the laws protecting their rights and also suggesting some measures to make the law for effective and goal oriented.

Keywords: migrants, labourer, interstate, laws, effectiveness, suggestions

1. Introduction

To survive on this earth, everyone is under responsibility to do work. As it is very much clear that it is applicable for all so all people are in search and need of works. But due to some constraints, everyone cannot get good jobs at every place because of this the concept of migration by workers came into existence. When in search of works, people moved to other places they faced various problems and hurdles ^[1]. India has over 400 million migrants (Indian Census, 2011). It can be safely assumed a large proportion of them are internal migrants - this includes interstate migrants, intrastate migrants and intra-district migrants. Delhi, Gujarat, Haryana, Kerala, Maharashtra, Punjab and Tamil Nadu have been the major destination states for migrants in India as per the Census of India. Interstate migration makes up for a key source of income for the low-income household in India, and despite the growing migration trend of nearly 4.5% annually between States, migrants continue to face barriers in their destination States ^[2].

Labour migration is a human phenomenon. The workers enjoy liberty to move one place to another place for the search of employment. Mankind has witnessed it since time immemorial. The inherent tendency of human being is to get himself accustomed with the new and comparatively convenient circumstances. India is on the threshold of a great transformation that will witness over the next few decades, two significant historical processes unfolding in tandem i.e. demographic transition and migration transition. It is similar to a social transformation of a scale that will change social relationships so profoundly that it will affect all social interaction, and all individuals and communities

simultaneously ^[3].

2. Who is a migrant worker?

Migration is defined as a process of movement of an individual from the place of birth/origin or normal residence to a new place of residence. Labour migration is an important factor affecting the course of socio-economic development in India. Accelerated movement of people mainly from the rural and backward areas in search of employment has been one of the most important features of the labour market scenario in India during the post-independence period. It has raised a number of concerns such as economic, social and political marginalisation of migrant workers, especially of those unskilled people moving from relatively deprived and depressed areas in search of gainful employment and living ^[4]. Migration is widely perceived as both induced by the extent vulnerability of social groups and also results in increased vulnerability at the point of destination. Further, the term has been defined as any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment ^[5].

The term 'Migration' is defined as, "a process of movement of an individual from his place of birth or origin to a new place of residence". Under the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families, the term 'migrant workers' has been defined as "a person who is to be engaged or has been engaged in a remunerated activity in a state of which he or

¹ Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers In India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 34

² Siddharth Sivaraman, *Is the Inter-State Migrant Workmen Act 1979, a dead letter?*, April 21, 2020, available at <https://www.orfonline.org/expert-speak/inter-state-migrant-workmen-act-1979-dead-letter-64979/> (last visited on June 07, 2020)

³ Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/160323/1/01_chapter%201.pdf (Last visited on June 03, 2020)

⁴ Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/160323/2/02_chapter%202.pdf (Last visited on June 05, 2020)

⁵ Ibid

she is not a national”^[6]. Further, section 2(e) of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 defines a ‘migrant workman’ as “any person who is recruited by or through a contractor in any state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer of such establishment”

3. Laws protecting the rights of migrant labourer

A key piece of legislation governing inter-state migrants in India is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The Act was enacted to prevent the exploitation of inter-state migrant workmen by contractors, and to ensure fair and decent conditions of employment. The law requires all establishments hiring inter-state migrants to be registered, and contractors who recruit such workmen be licensed^[7]. Contractors are obligated to provide details of all workmen to the relevant authority. Migrant workmen are entitled to wages similar to other workmen, displacement allowance, journey allowance, and payment of wages during the period of journey. Contractors are also required to ensure regular payment, non-discrimination, provisioning of suitable accommodation, free medical facilities and protective clothing for the workmen^[8]. Salient Features of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 are as^[9]

1. This Act does not apply to all individual migrant workers. It applies to-
 - a. Every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months."
 - b. To every contractor who employs or who employed (whether or not in addition to other workmen) on any day of the preceding twelve months.
2. All migrant workers who are employed individually outside his own State are not covered under this Act rather only those who are employed through contractor will be treated as inter-State migrant worker.
3. Every contractor is required to obtain a license from a licensing officer, appointed by the State Government, for recruiting any person in a State for the purpose of employing him in any establishment in another State.
4. Without being registered under the Act, a principal employer can not employ any inter-State worker.
5. The contractor is under duty to issue to every inter-State migrant worker, a passbook affixed with a passport size photograph of the workman and indicate information about the worker, including payment, advances paid etc. in Hindi and English and where the language of the worker is not Hindi or English, also in the language of the workman.
6. an interstate migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages

Act, 1948.

7. a journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant worker in his State to the place of work in the other State shall be payable by the contractor to the worker both for the outward and return journeys, and he/she will be entitled to payment of wages during the period of such journeys as if he were on duty.

This Act mentions the duty of appropriate Government to appoint registering officers^[10], licensing officers^[11] and Inspectors^[12]. Principal employer's duties are as-to apply to registering officer for the registration of the establishment^[13] as it is very much clear that no principal employer of an establishment to which this Act applies shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force^[14]. Within one month after receiving application for registration, the registering officer has to issue certificate of registration to employer, if all requirement are fulfilled and if not fulfilled then the application shall be returned to employer. If within one month the registering officer neither issue registration certificate nor return the application and receives any application in this regard, within fifteen days of receiving the application, he shall issue the registration certificate. If registration certificate has been obtained by misrepresentation or suppression of any material fact or for any other reason, the registration has become useless or ineffective; the registration certificate may be revoked after providing an opportunity of hearing to principal employer^[15].

Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner and may be prescribed^[16]. If any allowance required to be paid to an inter-State migrant worker is not paid by the contractor or if any facility is not provided for the benefit of such worker, such allowance and the facility shall be provided by the principal employer^[17]. Provision relating to licensing of contractors is contained in section 8. If the licensing officer is satisfied that a licence has been obtained by misrepresentation or suppression of any material fact, or the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence or has contravened any of the provisions of this Act or the rules made thereunder, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity to be heard by order in writing, revoke the licence or forfeit the security furnished by him and

¹⁰ Sec 3

¹¹ Sec 7

¹² Sec 20

¹³ Sec 4

¹⁴ Sec 6

¹⁵ Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers in India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 38

¹⁶ Sec 17 (2)

¹⁷ Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers In India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 39

⁶ “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, Article 2 (December 18, 1990).

⁷ K P Krishnan, Anirudh Burman, Suyash Rai, *Let Down by Law*, The Indian Express, May 9, 2020.

⁸ Ibid

⁹ Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers In India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 37

communicate the order to the holder of the licence ^[18]. Duties of contractors are mentioned in Sec. 12 as ^[19].

- a. to furnish such particulars and in such form as may be prescribed, to the specified authority in State from which an inter-State migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, or, as the case may be, the date of employment, and where any change occurs in any of the particulars so furnished, such change shall be notified to the specified authorities of both the State.
- b. to issue to every inter-State migrant workman, a pass book affixed with a passport size photograph of the workman and indicating in Hindi and English languages, and where the language of the workman is not Hindi or English, also in the language of the workman-
1. the name and place of the establishment wherein the workman is employed;
2. the period of employment;
3. the proposed rates and modes of payment of wages;
4. the displacement allowance payable;
5. the return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed and in such other contingencies as may be specified in the contract of employment;
6. deductions made; and
- c. to furnish in respect of every inter-State migrant workman who ceases to be employed, a return in such form and in such manner as may be prescribed, to the specified authority in the State from which he is recruited and in the State in which he is employed, which shall include a declaration that all the wages and other dues payable to the workman and the fare for the return journey back to his State have been paid.
- d. The contractor shall maintain the pass-book up-to-date and cause it to be retained with the inter-State migrant workman concerned.

The inter-State migrant workers shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948 ^[20]. Further, wages payable to an inter-State migrant Workman under this section shall be paid in cash ^[21]. There shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent of the monthly wages payable to him or seventy-five rupees whichever is higher. The displacement allowance shall not be refundable and shall be addition to the wages or other amounts payable to him. Further, journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman both for the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty ^[22]. Furthermore, every contractor employing inter-State migrant workmen is under

duty to ^[23].

- a. ensure regular payment of wages to such workmen;
- b. ensure equal pay for equal work irrespective of sex;
- c. ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;
- d. provide and maintain suitable residential accommodation to such workmen during the period of their employment;
- e. provide the prescribed medical facilities to the workmen, free of charge;
- f. provide such protective clothing to the workmen as may be prescribed; and
- g. in case of fatal accident or serious bodily injury to any such workman to report to the specified authorities of both the States and also the next-of-kin of the workman.

If any provisions of this Act or of any rules made thereunder regulating the employment of interstate migrant workmen, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention ^[24]. If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both ^[25].

The time limitation to take cognizance by a court is three months only from the date on which the alleged commission of the offence came to the knowledge of the inspector or authorized person concerned ^[26]. The offence under this Act shall be tried by court not inferior to the Metropolitan Magistrate or a Judicial Magistrate First Class and no court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, an inspector or authorized person ^[27].

4. Critical Analysis of the Law

In spite of these all protections, the inter-State migrant workers are bound to face humiliation and these all protective laws could not help them. In other words, the existing laws are not sufficient to protect the rights of inter-State migrant workers ^[28]. The report on the 'Social Inclusion of Internal Migrants in India' by UNESCO and UNICEF (2013) stipulates that "it is clear that there is an urgent need to develop a governance system for internal migration in India, i.e. a dedicated system of institutions, legal frameworks, mechanisms and practices aimed at supporting internal migration and protecting migrants." Further, social protection architecture should be developed that allows for portability of services like PDS, health

¹⁸ Ibid

¹⁹ Ibid

²⁰ Act 11 of 1948

²¹ Sec 13

²² Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers In India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 40

²³ Ibid

²⁴ Sec 25

²⁵ Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers In India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 42

²⁶ Sec 29

²⁷ Supra note 25

²⁸ Ibid

insurance, education in order to ensure easy and equal access to migrants. Migrant workers have to be integrated into the larger state level policies. India's social and political rights should wean away from the assumption that people are sedentary and migration as a phenomenon be accepted so that evolving policy framework will fully include migrant labour issues during their formulation ^[29].

The Act does not apply to all individual migrant Labour because it is targeted at an establishment with at least five workers. Moreover, one State Government would not want to interfere in the territorial jurisdiction of another state where the implementation responsibility lies with both the States. This is a stern hurdle for the effective enforcement of the Act. The notion behind this act was to safeguard the workers from the tribulations of a contracting system and also to exterminate the evils of contracting system ^[30].

Instead, the Act is boosting Contracting System by making the recruitment of Inter- State Migrant Workman by or through a contractor under an agreement or other arrangement for employment. There is no provision in the Act for specifying the duties and responsibilities of principal employers as well as accountabilities of the principal employer are also not specifically drafted. There should have been provisions for the mandatory registration of all, not just an establishment with five, interstate / intrastate workers in a gram panchayat or municipality or corporation. The unorganized sector is excluded completely.

The issues with the law and its non-enforcement are symptomatic of the socialist era, when the mere enactment of a law with aspirational requirements backed by legal coercion was considered adequate for creating good outcomes. This law, and many other labour-welfare legislation never considered issues like compliance costs, government capacity for enforcement, and importantly, counter-productive consequences. For example, the onerous requirements set out in this law incentivise contractors and employers to under-report inter-state workmen rather than to register them.³¹

5. Suggestion

In this context, various solutions are suggested to root out the problems faced by inter-State migrant workers. The National Commission on Rural Labour (1991) suggested the following changes in aforesaid Act of 1979 ^[32].

- a. The definition of migrant workman as given in Sec. 2(1) (e) should be expanded. It should cover all migrant workmen, whether they come on their own, or change contractors after entering the recipient State.
- b. Sec. 27 should be amended. Third parties also should be allowed to file complaints.
- c. A new Section should be inserted to the effect that the contractor should be held liable for any breach of the

Act, whether committed by him or the sub-contractor. It is for the contractor to take any action he desires against the sub-contractor.

- d. Though the Act specifies that the principal employer is also responsible if the contractor or sub-contractor violates the Act, in practice the contractor has been generally treated by the court as the principal employer. Consequently, the principal employer escapes the liability. There is need to make the liability of the principal employer specific.
- e. The cases related to claims of disabled workmen or heirs/deceased workmen should be transferred to the State from where the migrant workers were recruited if so desired by the workman or his/her heirs.
- f. Special courts should be appointed where found necessary to hear disputes concerning migrant and contract labour.
- g. Steps should be taken for effective implementation of the laws. In Public Sector Undertakings employing a large number of workers, a system of bipartite arrangement for over-seeing the implementation of laws should be evolved.
- h. Some of the facilities specified in the Act, such as medical treatment, cost of hospitalization of the worker, supply of clothing, should be provided to all workers: migrants as well as local.
- i. The States with a large number of out-migrant labourers should establish their office with adequate staff and other facilities in the States where majority of their workers work. The officers from this office in cooperation with the Labour Commissioner of the recipient State should periodically visit the work sites where inter-State migrant workmen from that State are employed and enquire about wages, health and welfare of these workers. Reports of their visit should be submitted both to their parent organisation Labour Commissioner and the Labour Commissioner of the host State. Their consolidated report, every six months, should be published in the labour gazette, giving not only statistics of visits and cases. but also, names of establishments visited, dates of visits and action taken.
- j. Temporary ration cards should be issued to migrant workers so that they can get their ration from the fair price shops.

On the recommendations of Working Group constituted by Indian Labour Conference held at New Delhi on 20-21 February, 2009, a Tripartite Group was constituted to examine the provision of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The Group examined various provisions of the Act and reviewed the problems faced by the migrant workers, existing provisions of the Act, enforcement machinery, problem in implementation of the Act etc. The Group has submitted its report and the report has been placed before Indian Labour Conference held on 23-24 November, 2010 ^[33].

6. Concluding Observation

The interstate migration of the workers is a social as well as

²⁹ Siddharth Sivaraman, *Is the Inter-State Migrant Workmen Act 1979, a dead letter?*, April 21, 2020, available at <https://www.orfonline.org/expert-speak/inter-state-migrant-workmen-act-1979-dead-letter-64979/> (last visited on June 07, 2020)

³⁰ Sanjay E, *Redundancy of Interstate Migrant Workmen Act, 1979*, available at <http://www.legalserviceindia.com/legal/article-955-redundancy-of-interstate-migrant-workmen-act-1979.html> (last visited on June 05, 2020)

³¹ K P Krishnan, Anirudh Burman, Suyash Rai, *Let Down by Law*, The Indian Express, May 9, 2020.

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³³ Dr. Prashant Mishra and Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers In India- An Analysis*, I: 2 (2011) The Legal Analyst, 34-43 at 42

economic phenomenon. The migrant labourers, being the marginalized ones, can't bargain with their employers and in the process they have to suffer endlessly. Though the purpose of the legislation to protect them is a genuine one, yet its implementation remains in question. Moreover, the very purpose of the legislation will be defeated if the scope of the Act is limited to five or less persons. Therefore, in order to make it a truly welfare legislation, the cap of five persons must be removed and must include in its purview any number of persons, even more than five persons to give them proper protection. Furthermore, the penalties must also be increased to make it an effective one. There should be a proper supervising authority who shall monitor the effective implementation of this law. Only then the true purpose of the law will be achieved and enjoyed.

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